

15 Wednesday, May 11, 2016

17 Whereupon, the above-referenced matter
18 came on for hearing at the Alcoholic Beverage
19 Control Board, Reeves Center, 2000 14th Street,
20 N.W., Suite 400S, Washington, D.C. 20009.

1

2 BOARD'S AGENT:

3 DONOVAN ANDERSON, Presiding

4

5 Board MEMBERS

6 RUTHANNE MILLER

7 NICK ALBERTI

8 MIKE SILVERSTEIN

9 JAMES SHORT

10

11 ALSO PRESENT:

12 PAUL PASCAL

13 MICHAEL LASTORIA

14

1 P R O C E E D I N G S

2 PROTEST HEARING (STATUS)

3 [9:43 A.M.]

4 CHAIRPERSON ANDERSON: Good morning,
5 everyone. I would like to welcome you to the
6 regularly scheduled meeting of the District of
7 Columbia Alcoholic Beverage Control Board.
8 Please note that today's hearings will be
9 conducted accordance with D.C. Official Code
10 section 2574 of the Open Meetings Act. Today is
11 May 11, 2016. I would first members of the board
12 with us today. To my far right is Ms. Roseanne
13 Miller, to my immediate right is Mr. Nick
14 Alberti, to my far left is Mr. Mike Silverstein
15 and to my immediate left is Mr. James Short. My
16 name is Donovan Anderson and I am the Chairman of
17 the Board. The Board has five members in
18 attendance for the conduct of business today and
19 that constitutes a quorum.

20 I would like to mention two things before
21 we get started. First of all, if you have an
22 electronic device, pagers, cells phones or such,

1 please make certain that they are turned off to
2 avoid any interruption of the proceedings.

3 Second, there is a piece of paper at the
4 table in front of you when you come forward as
5 your case is called, please take a note at the
6 table and please sign in. This is to ensure the
7 correct spelling of your name for the record.
8 Additionally, when you introduce yourself for the
9 record, please spell your name aloud for the
10 court reporter. I would like to note that the
11 approximate time is 9:44 and I apologize for my
12 tardiness, plus not starting on time today at
13 9:30.

14 Our first -- we are on our Protest
15 Hearings Status and our first case on our
16 calendar today is Case #16-PRO-00017, & Pizza,
17 License #101679. Would the parties please
18 approach and identify themselves for the record,
19 please?

20 MR. PASCAL: Good morning, sir. My name
21 is Paul L. Pascal and I'm here on behalf of &
22 Pizza.

1 CHAIRPERSON ANDERSON: Good morning, Mr.
2 Pascal.

3 MR. LASTORIA: Good morning, my name is
4 Michael Lastoria. I am the cofounder and CEO of
5 & Pizza.

6 CHAIRPERSON ANDERSON: Good morning, Mr.
7 Lastoria. Please remember to sign your name on
8 the sheet.

9 MR. LASTORIA: Sure.

10 MR. DUBESHTER: Richard Dubeshter,
11 commissioner A1-06 --

12 CHAIRPERSON ANDERSON: Mr. Dubeshter.

13 MR. DUBESHTER: -- representing the
14 Protest of the Advisory Neighborhood Commission
15 unanimously.

16 CHAIRPERSON ANDERSON: I'm sorry,
17 representing who, sir?

18 MR. DUBESHTER: The ANC.

19 CHAIRPERSON ANDERSON: And who's with
20 you, sir?

21 MR. LEVY: Good morning, I'm David Levy.
22 I'm representing a group of protestors, 10

1 protestors, to the application.

2 CHAIRPERSON ANDERSON: Good morning.

3 MR. SILVERSTEIN: Mr. Chairman?

4 CHAIRPERSON ANDERSON: Yes?

5 MR. SILVERSTEIN: Before we begin this I
6 would like to break from regular order and offer
7 a congratulations to someone who's not expecting
8 this at all. This month marks the end of the
9 49th year of legal service for Mr. Paul Pascal.
10 Next month begins his 50th year as a member of
11 the BAR and a practicing attorney. I'm not sure
12 we'll see him in the next three or four weeks, so
13 may I be the first to congratulate Mr. Pascal on
14 this magnificent achievement, sir.

15 MR. PASCAL: Thank you. I have to
16 congratulate you on your memory because I had
17 mentioned that probably about six months ago as
18 we were leading up to this. Yeah, June 24th is
19 the day. And I also want to say, Mr. Anderson,
20 this is the first time I've been before you since
21 you've chaired this group and I look forward to
22 not only today, but future times, and thank you

1 Mr. Silverstein that's very kind of you.

2 CHAIRPERSON ANDERSON: So, are there any
3 preliminary issues in this matter?

4 MR. PASCAL: Good morning, Mr. Chairman
5 and fellow Board members. Yes, there is. I have
6 to be somewhat circumspect because it arises out
7 of the mediation and we can't talk about what
8 took place in the mediation, but suffice it to
9 say that this is a status conference and
10 mediation did not lead to a settlement and
11 principally the only issue discussed at mediation
12 was the use of a plan which is the subject of
13 this license of this summer garden in front of
14 the place and some issues came up where Ms.
15 Fletcher invited protestants to write a letter to
16 the Board on their issue about the land use issue
17 and that triggered me filing a motion in limine
18 to limit any evidence or testimony about the use
19 based on the Kopf case.

20 The Kopf case reads in part, "The Board
21 did not err in relying on the duly issued
22 Certificate of Occupancy. If the Board had gone

1 beyond the Certificate of Occupancy to ascertain
2 whether or not it was properly issued, the Board
3 would have been acting in effect as a court of
4 appeals over coordinate administrative
5 departments. The Board neither has the
6 jurisdiction nor the expertise to review
7 compliance with safety requirements in such a
8 manner. The correct avenue for pursuing any
9 alleged violation of safety is to the compliant
10 government entity involved.

11 CHAIRPERSON ANDERSON: Mr. Pascal, I'm
12 sorry to interrupt you.

13 MR. PASCAL: Yes?

14 CHAIRPERSON ANDERSON: Is it a summer
15 garden or is it a sidewalk café?

16 MR. PASCAL: Well, we filed it as a
17 sidewalk café because that was the information
18 that we had at hand but it is a summer garden. I
19 planned at the appropriate time to ask the Board
20 to change the application from a sidewalk café to
21 a summer garden. But it is a summer garden and
22 the use is the same, whether it's a summer garden

1 or a sidewalk café, we applied for 32 seats. The
2 actual certificate of occupancy, the 36 seats of
3 the summer garden and the eight interior seats.
4 So, it is a summer garden. The issue that they
5 raised and the reason we filed a motion in limine
6 is that they are claiming that other agencies
7 have jurisdiction over this plaza area and what
8 we're saying is the Board can't look beyond the
9 certificate of occupancy and at the mediation I
10 gave them a copy of the certificate of occupancy.
11 It's not only -- we have the building permit, we
12 have the zoning permit, there's a surveyor
13 certificate so there's four agencies that have
14 all said that this is a summer garden, that the
15 landlord had the right to lease, and of course we
16 have the lease.

17 So the letters -- the first letter came
18 in from Mr. Dubeshter of the ANC and he talks
19 about in his letter that we're trying to
20 privatize space. Well, we're -- you know, the
21 space is privately owned and it's got a
22 Certificate of Occupancy. Yesterday, late in the

1 day, another letter came in from a Mr. Krieger,
2 actually Mr. Krieger's letter talk about
3 privatization while Mr. Dubeshter's letter talks
4 about C of O appears to conflict with existing
5 farmer's market permit. That's his position, but
6 the issue is that the Board can't look beyond the
7 C of O. Quote "the impact is on the function of
8 the plaza, they have to work with city agencies.

9 The Kopf case puts all that to rest so
10 what we're asking for today is to grant our
11 motion in limine and just leave this case to if
12 there are peace, order and quiet. At mediation,
13 Ms. Fletcher tried to engage the participants to
14 talk about the peace, order and quiet and they
15 said, no their issue is with the occupancy, so
16 I'm ready to go back to mediation if they want to
17 talk about peace, order and quiet, and we're
18 ready to still engage with them and hopefully get
19 it resolved, but if not the protest hearing is
20 scheduled for June 8th, this is a new
21 application, my client is operating now at least
22 only internally and we'd like to move forward.

1 CHAIRPERSON ANDERSON: Thank you.

2 MR. ALBERTI: May I ask a quick question,
3 Mr. Chair?

4 CHAIRPERSON ANDERSON: Sure.

5 MR. ALBERTI: Mr. Pascal, this is sort of
6 a side issue.

7 CHAIRPERSON ANDERSON: I'm sorry, go
8 ahead Mr. Alberti and I didn't recognize you.

9 MR. ALBERTI: Oh, I'm sorry.

10 CHAIRPERSON ANDERSON: For the record,
11 yes. Yeah, I knew, but not for the record.

12 MR. ALBERTI: So, I -- this is sort of a
13 side issue but I just want to make sure in
14 looking to the future, so if the Board were to
15 grant an endorsement for the summer garden, does
16 the licensee understand that whatever ABRA rules
17 and regulations apply to that summer garden would
18 apply however they use it? So, if they let this
19 place out for the farmer's market that whatever
20 rules and regulations ABRA has on it would apply
21 during that period?

22 MR. PASCAL: Oh, certainly, oh yeah.

1 MR. ALBERTI: Okay, I just wanted to make
2 sure.

3 MR. PASCAL: We're saying yes, you have
4 jurisdiction over it, but you can't look beyond
5 the Certificate of Occupancy nor the zoning
6 certificate or the surveyor's certificate, but
7 yes, as far as use is concerned, that's --

8 MR. ALBERTI: I just wanted both parties
9 to understand that that was -- if we granted it
10 that that was going to be the case.

11 MR. PASCAL: There are issues that I
12 really don't want to address now because they go
13 to the core if we go to a protest --

14 MR. ALBERTI: Sure.

15 MR. PASCAL: -- that would be calm your
16 fears if you had any.

17 MR. ALBERTI: All right.

18 CHAIRPERSON ANDERSON: You have an
19 opportunity to respond.

20 MR. DUBESHTER: Yeah, the one thing that
21 I can say is we're looking into all the
22 ramifications of whatever the city and mistakes

1 the city might have made. This is a one up
2 situation, because the city built the plaza. The
3 ownership may be to the owner building but that's
4 debatable because there may be covenants that we
5 haven't been able to find. And it's a public
6 plaza, it took ten years to plan and it's the
7 only public space in Ward 1. It's a large public
8 space and the city paid for the whole paving from
9 the plaza all the way to the building, so the
10 city has an interest in that and it's run by DPR,
11 so all DPR kinds of regulations would pertain to
12 whatever use of the -- even the private space --
13 because it would have an easement from the city.

14 MR. LEVY: If I may?

15 CHAIRPERSON ANDERSON: Yes?

16 MR. LEVY: I want to respond to a couple
17 of things. First is Mr. Pascal's representation
18 of what happened at mediation.

19 CHAIRPERSON ANDERSON: Well, I think he
20 did not -- hold on -- he did not go into details
21 and I think he was just trying to give us some
22 background.

1 MR. LEVY: May I address one point if I
2 could, Mr. Chair? That he said we have the one
3 issue. In fact he tried to direct us to say that
4 was our only issue, and we said it was not our
5 only issue and when we sent our letter in the
6 first thing he did was to send in a motion to try
7 and to say our points were irrelevant. The point
8 is there is an easement on this space, it was
9 built by the District of Columbia, it's
10 maintained by the District of Columbia. There is
11 an actual easement, a public easement, over this
12 area. The C of O resulted in a building permit
13 that's building something partially on public
14 space outside of this easement area, so the
15 District of Columbia has multiple agencies making
16 conflicting decisions and we the residents of the
17 District of Columbia are trying to use the public
18 plaza that we put our own time and effort into
19 that the city put its own money into to build.
20 The city paid for everything that they're
21 claiming is private space.

22 CHAIRPERSON ANDERSON: Yes, Mr.

1 Silverstein?

2 MR. SILVERSTEIN: I just want to make
3 sure, because there was some confusion and both
4 sides have not signed off on this to us: This is
5 a summer garden and not a sidewalk -- this is a
6 summer garden and not a sidewalk café
7 application, correct?

8 MR. DUBESHTER: That's correct.

9 MR. LEVY: I don't know that there's any
10 difference. What we see as privatization of
11 public space.

12 MR. SILVERSTEIN: We're not concerned
13 with that. The Kopf decision, which gives the
14 ANC great weight, speaks directly to this issue,
15 and what we need to know before we do this is
16 what public agencies are involved in this? If it
17 is, and both sides agree, that this is a summer
18 garden application, then it's DCRA. If both
19 sides do not agree, then perhaps it's DDOT.

20 MR. LEVY: It's on DPR controlled land.

21 MR. SILVERSTEIN: Pardon?

22 MR. LEVY: It's on DPR controlled land.

1 It's administered by the Department of Parks and
2 Recreation. We met with them on site and they
3 agreed that there's a problem in the overlapping
4 permits in the same space.

5 MR. SILVERSTEIN: Okay, I just wanted to
6 make : It's a summer garden. The legal
7 definition is a summer garden is on space that is
8 owned by, not controlled by, owned by the
9 property owner. A sidewalk café is in public
10 space that is listed as public space and is,
11 therefore, under the purview of the DDOT Public
12 Space Committee.

13 MR. LEVY: We don't agree with that. In
14 fact, the drawing that they have of the DCRA
15 stamp --

16 MR. SILVERSTEIN: You don't agree with the
17 law?

18 MR. LEVY: I don't agree that it's a
19 summer garden versus -- I don't understand why
20 that's an issue. I understand that one is public
21 space and one is private space. But what they're
22 permitted to do actually encumbers public space

1 so I don't agree that it's a summer garden.

2 MR. SILVERSTEIN: Very well.

3 CHAIRPERSON ANDERSON: Yes, Mr. Pascal.

4 MR. PASCAL: Mr. Silverstein, the C of O
5 speaks for that because it talks about it being a
6 summer garden. The actual language on the C of O
7 is "prepared food shop with interior seats and 36
8 seats in a summer garden for a total of 84 seats
9 on the first floor."

10 MR. LEVY: Well, the survey shows the
11 land being owned by the property owner, the
12 permit shows the land being owned by the property
13 owner. And the C of O clearly shows it as a
14 summer garden.

15 MR. PASCAL: He --

16 CHAIRPERSON ANDERSON: Go ahead sir.

17 MR. DUBESHTER: The protestants are all
18 looking into the validity of the C of O.

19 CHAIRPERSON ANDERSON: Well --

20 MR. DUBESHTER: And various agencies.

21 CHAIRPERSON ANDERSON: Remember, this is
22 just a Status Hearing for a protest and there is

1 a preliminary -- there are just some preliminary
2 issues that are being addressed that the Board is
3 not going to make a decision today because all of
4 the -- everything that's coming through basically
5 has developed within the last 24 to 48 hours, so
6 the Board is also -- we will get some type of
7 determination so we can make a decision, but this
8 is an opportunity for the parties to provide --
9 to speak on the motion and the issue -- at least
10 the motion that's before us and what is it that
11 you're asking the Board to consider. That's --
12 and then I will give the instructions for the
13 Protest Hearing that we're going to have, but
14 this is just our preliminary -- yeah.

15 MR. PASCAL: We would like a ruling as
16 soon as possible, if not today, on the motion in
17 limine because that dictates how we're going to
18 prepare our case, and clearly the Kopf case, at
19 least as to the issue of the C of O, the Board
20 can't look beyond that, so at least the motion in
21 limine should be granted. We'll continue to work
22 with them if we can -- if not we'll be here on

1 the 8th of June for the Protest.

2 CHAIRPERSON ANDERSON: Yes, sir? You
3 have something?

4 MR. DUBESHTER: I don't believe the
5 motion in limine should be granted because we're
6 still looking into whether the C of O was issued
7 with all the information that all the agencies
8 need to make an intelligent decision. I really
9 believe that there are some documents that would
10 lead everybody to a different decision as far as
11 what is public land.

12 MR. PASCAL: This is a perfect answer for
13 me as far as the Kopf decision is because the
14 place for them to look at that is whoever issued
15 the C of O not the ABC Board, so whatever he
16 tried to demonstrate before the Board, the Board,
17 based on Kopf, couldn't look at, so right now we
18 have a valid C of O, we seek a motion in limine.
19 If somewhere along the line they challenge the C
20 of O, that's not to be done here, it's to be done
21 at another agency, and they can still operate,
22 but at least for purposes of evidence before

1 this Board that would be inappropriate because
2 you couldn't listen to that evidence, you don't
3 have the expertise for it. That's with all due
4 respect.

5 CHAIRPERSON ANDERSON: ___ taken sir. Just
6 one minute, Mr. Short. Do you have something to
7 say sir? Now, remember, you're addressing the
8 Board, not the parties.

9 MR. DUBESHTER: Yeah, what I'm saying,
10 again, is that there will be evidence from the
11 other agencies that -- you know -- that will
12 change that and I don't -- since there was some -
13 - from -- that we just got at mediation a few
14 days ago, and it doesn't seem fair -- like they
15 talked about blindsiding them, and we didn't --
16 and they sort of blindsided us.

17 MR. LASTORIA: If you don't mind.

18 CHAIRPERSON ANDERSON: Mr. Pascal, of
19 course you're -- you have every opportunity to
20 speak, but make sure that your attorney -- that
21 you're following instructions from your attorney,
22 so you speak at your peril, so I just want to let

1 you know that. Do you still need to speak, sir?

2 MR. PASCAL: No, he's fine.

3 CHAIRPERSON ANDERSON: Yes, Mr. Short.

4 MR. SHORT: Mr. Pascal, just
5 historically, so we can get some perspective on
6 the use of this property, is this the same
7 property that in the early 60s, prior to some
8 disturbances in the city in '68, was used for a
9 24-hour news stand?

10 MR. PASCAL: Well, you're testing my
11 memory. I am a native Washingtonian. My
12 recollection is across the street from it was a
13 farmer's market and right up the street is the
14 Tivoli theater right across the street which I
15 used to go to as a youngster. But I don't
16 remember the newsstand per se, but that is the
17 geographic location, it's where 14th Street
18 crossroads cross.

19 MR. SHORT: But that district, if you
20 remember just a little bit, there was a miles-
21 long sandwich shop that sat between Canyon Street
22 and Brock Road and right behind the miles-long

1 sandwich shop the 1300 block -- that's where the
2 newsstand was.

3 MR. PASCAL: It sounds like you have the
4 right area but I just don't remember the
5 newsstand.

6 MR. SHORT: Okay, I was just trying to
7 get some perspective. Thank you, Mr. Pascal.

8 CHAIRPERSON ANDERSON: Do we -- yes, Ms.
9 Miller.

10 MS. MILLER: I wanted to ask the
11 protestor on your schedule do you think you're
12 going to be able to resolve the discrepancies
13 that you've referred to in the C of O. I know
14 there are permits at the time of the hearing?

15 MR. LEVY: We are actively working with
16 DCRA and the DPR to resolve the issues now --

17 MS. MILLER: Okay.

18 MR. LEVY: -- so we're relying on the
19 District of Columbia government's schedule in
20 terms of the people we're meeting, so it's
21 unknown.

22 MS. MILLER: And, could you -- that would

1 be good. Do you -- can you make reference again
2 to the easement that you were talking about? You
3 have a copy of the easement?

4 MR. LEVY: I do. This is a document from
5 November of 2001. It's a survey of the property
6 and the easement is granted to NCRC, which is now
7 the District of Columbia Government, National
8 Capitol Revitalization Corporation, if I
9 remember. And so it goes to I understand Mr.
10 Silverstein's comment about ownership versus use
11 maybe. You were talking about public versus
12 private and summer garden versus café buy, I mean
13 this is a use easement, that this is for the
14 District of Columbia, so we're really trying to
15 clear this up. When this plaza was designed, it
16 was designed with the idea that they were going
17 to have businesses here that would have seating,
18 we thought seating was desirable, the [inaudible
19 20:27] flexible and to mix in with all the public
20 space and to be shared among all the restaurants.
21 This was never designed, and this public
22 easement, is evidence of that, it was never

1 designed to be walled off and privatized business
2 by business. This is from a planning process
3 that we went through for many years with the
4 District of Columbia government and as my
5 colleague said, the District of Columbia
6 government paid for this, built it with our tax
7 dollars, maintains it with our tax dollars, it's
8 not private money and it's permitted for use for
9 a farmer's market now by DPR, the same area has
10 already been permitted for like 11 years I think,
11 as a farmer's market, so we're really trying --

12 MS. MILLER: Has it always been used as a
13 public space?

14 MR. LEVY: It's always been used as a
15 public space for public passage and public use,
16 always since built.

17 MS. MILLER: Okay, thank you. Mr.
18 Pascal? Could you address the significance or
19 non-significance in your mind of that easement?

20 MR. PASCAL: Well, even if there was an
21 easement. Well, first of all, I take the
22 position that you shouldn't be asking questions

1 about easement.

2 MS. MILLER: Why is that?

3 MR. PASCAL: Because this is an ABC Board
4 and your jurisdiction is over peace, order and
5 quiet and that is the overriding protestable
6 issue here. The Kopf case says that you cannot
7 look beyond the C of O. Notwithstanding that,
8 you could have had an easement in 2001 but that
9 could have changed. The mere fact that they have
10 a C of O indicates that notwithstanding that
11 easement, the C of O was granted to the owner of
12 the building and to these people to use the site,
13 to use that site, and so my answer is there could
14 have been an easement years ago but that changed
15 -- that changed -- all that changed on April 20th
16 when the C of O was issued. And in any event,
17 one other additional comment he talked about were
18 walling things off. This is for common use so if
19 you came up to the plaza and you were shopping at
20 the farmer's market and you decided you wanted to
21 sit there and not eat a pizza but just sit there
22 and eat something that came from there, you could

1 use those seats. There's no walling, there's no
2 separation, anyone can use those seats and the
3 other side knows that.

4 MR. LEVY: I don't know that. I think
5 that's [inaudible 22:53], I'm sorry.

6 MS. MILLER: So, you said the setup is
7 that this sidewalk café or summer garden to be
8 determined is only a part of the area that the
9 rest is public space and the rest could be used
10 for the farmer's market?

11 MR. PASCAL: Yes, as a matter of fact --
12 yeah, I mean the sight line of ownership of the
13 property is 20 feet away from the building and
14 that just goes around the whole front of the
15 plaza. In essence what's happened here is until
16 my client came along and rented the space at a
17 premium because of the plaza, the farmer's market
18 was just using the site because they weren't
19 constrained because a summer garden permit was
20 going to be issued. It's now issued. I
21 understand the public's concern, they put a lot
22 of time and effort in there, it is their park and

1 we're not trying to encroach on it, but we have
2 the right to use it as a summer garden as
3 evidenced by the C of O.

4 MS. MILLER: So, I have one other
5 question. Your interpretation of the Kopf case
6 is that it applies primarily to C of O's or to
7 any agency permit or decision?

8 MR. PASCAL: It's any agency.

9 MS. MILLER: What about the farmer's
10 market permit then? Why shouldn't we give
11 deference to that?

12 MR. PASCAL: Pardon me?

13 MS. MILLER: The farmer's market permit,
14 why wouldn't we --

15 MR. PASCAL: I don't know about a
16 farmer's -- they're talking about all of that.
17 You can't look beyond that. What you have in
18 front of you in the case, in the application, is
19 the C of O which grants the use of a summer
20 garden. I don't know what kind of permits the
21 other agencies have given. I don't know what
22 kind of permits DPW or DPR or whatever the

1 initials are, that's not in your purview. The
2 only thing before you right now is the C of O.
3 I'm trying to be respectful, but, you know, the
4 complication is pretty clear. You have
5 jurisdiction over ABC laws and regulations and
6 you give deference to any other license issued by
7 another agency. If they want to challenge that
8 agency that's not for here and no evidence about
9 that is for here. They have to go to the agency
10 to do that and, you know, obviously we would have
11 an opportunity if they were successful at a
12 challenge to administratively deal with that.
13 All I'm asking for today is any evidence about
14 all this other stuff doesn't belong here and I
15 want it limited as a motion limine. You know,
16 our protests are only an hour and a half or so
17 for each side and we've consumed nearly a half
18 hour of time here today arguing over issues which
19 don't belong in front of the Board. That's all
20 I'm trying to show.

21 MS. MILLER: I can see the protestant
22 just wants to respond to what you said and then I

1 think I'll be finished with my questions. Yeah?

2 MR. LEVY: Thank you. I want to respond
3 to a couple things. First of all, I mean peace,
4 order and quiet is exactly at the heart of what
5 we're doing. This is a family oriented --

6 CHAIRPERSON ANDERSON: Hold on -- hold on
7 -- hold on one minute. That's the purpose of the
8 Protest Hearing. Normally, we would not have --
9 been having all this discussion at this juncture,
10 but because of the motion that came in within the
11 last 24 to 48 hours we're just talking about the
12 motion, we're not talking about the heart of the
13 case.

14 MR. LEVY: If I may, I'll focus on that
15 because this goes to the [inaudible 26:23]
16 because Mr. Pascal wants to say that this is
17 about public versus private space and it doesn't
18 belong here based on this motion. The whole
19 reason we're here is because of what's before the
20 Board which is peace, order and quiet, in this
21 case of a public park that's not been taken into
22 consideration.

1 CHAIRPERSON ANDERSON: All right, okay.

2 MR. DUBESHTER: And the C of O did not
3 take in consideration the ownership of the park
4 and whatever ramifications, whether it would be
5 by mistake or by omission.

6 CHAIRPERSON ANDERSON: All right, thank
7 you.

8 MR. DUBESHTER: So the C of O is sort of
9 in question.

10 CHAIRPERSON ANDERSON: Well, the Board
11 cannot look beyond the document --

12 MR. DUBESHTER: Right, I understand that.

13 CHAIRPERSON ANDERSON: The document
14 speaks for itself and the Board will have to
15 accept the document as it stands, and so, but
16 we're not going to make a decision right now, we
17 will take the matter under advisement and make a
18 decision. So, now I can give it [inaudible
19 27:22].

20 MS. MILLER: Mr. Chairman, I just want to
21 add, though, I think what's at issue is whether
22 the C of O was issued in error, so if -- but

1 that's for them to resolve with zoning --

2 CHAIRPERSON ANDERSON: That is correct,
3 but that --

4 MS. MILLER: -- if they resolved it they
5 could come back with a different C of O for the
6 hearing.

7 CHAIRPERSON ANDERSON: But right now, the
8 Board is not -- I know that Board members have
9 different questions and they ask different
10 questions and based on their -- how they feel on
11 the issue -- but the Board will sit and make a
12 decision but I don't think it is the Board's
13 responsibility or duty to go beyond the paper we
14 are presented. The paperwork, the document
15 that's issued by the District of Columbia
16 government stands for itself and should not be
17 the purview of the Board to scrutinize whether or
18 not it was issued in error, that's not -- I don't
19 think, as Chair, I mean I'm speaking for myself
20 right now, but I don't think that it's our
21 purview to do that. That is for -- that should
22 be done at another time with other entities.

1 However, based on the motion that was issued,
2 that was filed, the Board will take it under
3 advisement and issue a determination as soon as
4 possible. All right. It's my understanding that
5 the ANC was granted standing at the hearing --
6 I'm sorry -- the roll call. And you're also
7 representing the ANC?

8 MR. DUBESHTER: The ANC.

9 CHAIRPERSON ANDERSON: And you're from?

10 MR. LEVY: The protest group.

11 MR. DUBESHTER: The ANC.

12 CHAIRPERSON ANDERSON: Go ahead.

13 MR. DUBESHTER: The ANC voted
14 unanimously.

15 CHAIRPERSON ANDERSON: All right, fine.
16 Now, the purpose of the Protest Hearing is to
17 determine the appropriateness of the
18 establishment in this section of the District
19 where the establishment is located. This matter
20 is set for a Protest Hearing on June the 8th at
21 1:30 p.m. Now that we have scheduled the matter
22 for a Protest Hearing, there are a few things I

1 would like to instruct the applicant and the
2 protestant about so that the Protest Hearing is
3 focused on the issues -- only those issues that
4 are being protested. The Board does not intent
5 to hear testimony in matters that are not
6 relevant to this case. You should have received
7 by electronic or regular mail a letter explaining
8 the protest process, a copy of the protest
9 information form and a copy of the exhibits form.
10 If you do not have these documents, please
11 contact the Assistant General Counsel, Ms.
12 Randal, following the hearing. It is imperative
13 that you review the rules closely and adhere to
14 them before and during the Protest Hearing. You
15 are also required to complete and submit the
16 protest information form and the exhibit form
17 seven days before the date of the hearing.

18 These two forms and accompanying
19 documents need to be submitted to the ABRA legal
20 division and all opposing parties in this matter.
21 If we do not receive a copy of your PIF, your
22 application or your protest, whichever side you

1 are representing, may be subject to dismissal.
2 Likewise, if we do not receive a copy of the
3 exhibit form and the exhibits of your exhibits
4 may be excluded from the record upon the finding
5 that the opposing party has been prejudiced by no
6 good cause or the failure to submit has been
7 shown. Likewise, witnesses other than the
8 parties may also be subject to exclusion if not
9 identified in the PIF. Accordingly, these forms
10 are very important. They greatly assist the
11 Board in narrowing the protest issues,
12 facilitating the process and keeping the parties
13 informed during the hearing.

14 They likewise provide notice to the
15 opposing parties enabling them to better prepare
16 the hearing. Thank you for your cooperation. If
17 you have any questions, you're free to contact
18 Ms. Randal regarding the matter. The Board will
19 -- we have listened to the arguments, we will
20 take the matter under advisement, and will issue
21 a decision. If you are unable to settle this
22 matter we'll see you for a Protest Hearing,

1 again, on June 8, 2016 at 1:30.

2 MR. PASCAL: Mr. Anderson, you mentioned,
3 of course, the exhibits for this form that we
4 have to file. Your ruling on the motion is very
5 important because it will determine what exhibits
6 I have to have so --

7 CHAIRPERSON ANDERSON: The Board -- this
8 is June -- that's over a month, and the Board
9 will issue a decision, but since you're new, at
10 least this is the first time you're appearing
11 before me, we issue -- well my goal is that we
12 will issue -- make the deter -- we will discuss
13 these matters today and make decisions if we have
14 the legal advice that we need so --

15 MR. PASCAL: I appreciate that.

16 CHAIRPERSON ANDERSON: -- a decision will
17 be forthcoming. Okay?

18 MR. PASCAL: Good, thank you.

19 MR. DUBESHTER: Thank you.

20 (Whereupon the above-entitled matter was
21 concluded.)

22